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MAY 22 1998

May 22, 1998

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Washington, D.C. 20554

NEW YORK OFFICE  
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NEW YORK, NY 10022-2585

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NEWARK, NJ 07102-5397

SPECIAL COUNSEL  
JEROLD L. JACOBS

Re: RM-9260  
Advance Television Systems  
Establishment of Class A TV Service

Dear Ms. Salas:

On behalf of our client, Island Broadcasting Co., licensee of three local originating LPTV stations in the New York metropolitan area, transmitted herewith for filing are an original and eleven (11) copies of its "Statement of Island Broadcasting Co.," which vigorously supports the amended Petition for Rule Making (RM-9260) filed by Community Broadcasters Association.

This "Statement" is being filed pursuant to Public Notice, "Petition for Rule Making Filed for 'Class A' TV Service," Mimeo No. 82996, released April 21, 1998.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,

  
Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 22 1998

In the Matter of )  
 )  
Advanced Television Systems and ) RM-9260  
Their Impact upon the Existing )  
Television Broadcast Service )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**STATEMENT OF ISLAND BROADCASTING CO.**

**ISLAND BROADCASTING CO.** ("Island"), licensee of Low Power Television ("LPTV") Stations WXNY-LP, New York, New York, WNYX-LP, Mineola, New York, and WNXV-LP, New York, New York, by its attorneys, pursuant to §1.405(a) of the Commission's Rules and Public Notice, "Petition for Rulemaking Filed for 'Class A' TV Service," Mimeo No. 82996, released April 21, 1998, hereby submits this Statement, which vigorously supports the amended Petition for Rule Making (RM-9260)("Petition") filed by the Community Broadcasters Association ("CBA").

1. Since 1985, Island has been providing a diverse array of live creative LPTV programming to ethnic and minority viewing audiences in the New York City metropolitan area and Long Island via what are now three LPTV stations -- WXNY-LP, New York, New York, WNYX-LP, Mineola, New York, and WNXV-LP, New York, New York. Island's stations have become a major TV outlet in the New York City area for ethnic and minority audiences, almost all of Island's programming is aimed at these groups, and Island is very concerned that it be allowed to continue its important local community service role without fear of displacement shutdown. Hence, Island enthusiastically endorses the aims of CBA's Petition.

2. Clearly, adding a provision to Part 73 of the Rules to protect licensed LPTV stations from future full power or other primary allocations is essential for the survival of local originating LPTV stations. Only such evidence of permanence can attract the programming, viewership, investment, cable carriage, and listings in print media that those stations need to survive. CBA's proposal, as drafted, protects current full power licensees and permittees, while allowing the maximum practical flexibility for originating LPTV stations to become Class A television licensees. Thus, especially given the Commission's oft-stated concerns about the future viability of LPTV stations, establishing a Class A TV service for qualifying LPTV stations is certainly in the paramount public interest.

3. As to CBA's specific rule proposals, Island urges that, in order to demonstrate lack of interference under proposed Section 73.627(c)(iv) or proposed Section 73.622(i) of the Rules, an LPTV station should be allowed maximum latitude in its showing that it will not interfere within the predicted coverage of any full power station actually operating as of the date of filing for Class A status. For example, if both the LPTV station and the potential interfered-with full power or other LPTV station have been on the air for a period of time with no measured interference, this should be considered strong evidence of non-interference when making the required showing.

4. Moreover, unless a Class A LPTV station can eventually convert to DTV, it will have limited survival. In this regard, under the Commission's latest DTV implementation rules (Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87-268, FCC 98-24, released February 23, 1998), a full power DTV station must be at least 21 dB above a co-channel NTSC LPTV station at the edge of the DTV station's noise limited service area (F(50/90) contour - 41 dBu), AND a full power DTV station must be at least

23 dB above a co-channel DTV LPTV station under the same conditions in order for the Commission to conclude that there will be no interference to the full power DTV station. However, if an NTSC LPTV station and a distant co-channel full power DTV station both have been operating for a period of time with no evidence of interference to the full power DTV station, and THEN the NTSC LPTV station converts to DTV ON CHANNEL and drops 7 dB in ERP, there will, in fact, be NO interference to the full power DTV station caused by the co-channel DTV LPTV station, based upon the Commission's interference criteria (above), no matter what the calculated interference is! The logic of this non-interference conclusion is, of course, that if there has been no interference to a full power DTV station by an NTSC LPTV station for some period of time with both stations operating, the NTSC LPTV station must effectively be lower than the required dB level at the DTV contour edge. Thus, if the LPTV station then drops 7 dB on converting to DTV, it must still be at least 5 dB below the required level, since there is only a 2-dB increase in the protection going from NTSC to DTV, and this should be sufficient for the Commission to conclude that there is no interference to the full power DTV station. It is essential that every opportunity for a Class A LPTV station to maintain operations by conversion to DTV be recognized by the Commission.

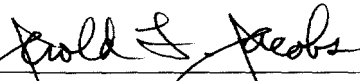
5. Finally, Island strongly recommends that, in the proposed amendments to Sections 73.625(a)(1) and 73.683(a) of the Rules, the "minimum field strength...over at least 75%" language should be modified or at least interpreted to cover either population OR geographic area of the proposed Class A TV station's community of license, since, in some cases, geographic area alone is an unfair measure of a station's coverage. See Broadcast Station Assignment Standards, 39 FCC 2d 645, 670 ¶53 (1973), in which the Commission held that "coverage of a community approximating 90% of its area or population with a signal of required

strength is in substantial compliance with the service requirements of...[the] rules" (emphasis added). Alternatively, noting that, because of the nature of low power, an LPTV transmitter is often located some miles away from the studio in which an LPTV station's programs are produced, Island suggests that a requirement that production take place within 50 miles of the transmitter would be more realistic and practical than a field strength criterion for transmitter location. Obviously, such a mileage standard would meet the intended goals of the proposed transmitter location rules, which are that LPTV programs not be created at great distance from the LPTV station's coverage area, such as via satellite feed, and that the programming should truly represent localism.

WHEREFORE, in view of the foregoing, Island respectfully requests that the Commission should issue a Notice of Proposed Rule Making which adopts CBA's Petition and also incorporates the suggestions made herein.

Respectfully submitted,

**ISLAND BROADCASTING CO.**

By:   
Howard J. Braun  
Jerold L. Jacobs

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Its Attorneys

Dated: May 22, 1998

### CERTIFICATE OF SERVICE

I, Gillian B. Kirkpatrick, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that this 22nd day of May, 1998, I have caused to be mailed, or hand-delivered, a copy of the foregoing "STATEMENT OF ISLAND BROADCASTING CO." to the following:

Keith Larson, Asst. Chief,\*  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W. Room 314  
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**Counsel for Community Broadcasters Association**

  
Gillian B. Kirkpatrick

**\*BY HAND**